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13726
RECORDATION NO. Filed 1425

2-223A138

AUG 10 1982 - 4 20 PM
August 6, 1982

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergenovich
Secretary
INTERSTATE COMMERCE COMMISSION
Washington, D.C. 20432

Date
Fee \$ 50.00

ICC Washington, D. C.

AUG 10 1982

FEE OPERATION BR.

AUG 10 4 13 PM '82
RECEIVED

Re: Documents for Recordation

Dear Ms. Mergenovich:

I have enclosed an original and one fully executed counter-part of the Mortgage described below, to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

The enclosed Mortgage is a primary document, dated August 6, 1982.

The names and addresses of the parties to the Mortgage are as follows:

Mortgagor: The New York, Susquehanna and
Western Railway Corporation
One Railroad Avenue
Cooperstown, New York 13326

Mortgagee: New Jersey Economic Development
Authority
Capital Place One - 6N990
200 South Warren Street
Trenton, New Jersey 08625

Included in the property covered by the aforesaid Mortgage are railroad cars, locomotives and other rolling stock intended for use related to interstate commerce, or interests therein, owned by The New York, Susquehanna and Western Railway Corporation at the date of said Mortgage or thereafter acquired by it or its successors as owners of the lines of railway covered by the Mortgage.

P. 1
of 14

David L. Fox
Carmen E. Fox

RUBIN, QUINN, MOSS & GIRARD-diCARLO

Ms. Agatha L. Mergenovich
Secretary
August 3, 1982
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A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

William P. Quinn, Esquire
RUBIN, QUINN, MOSS & GIRARD-diCARLO
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, Pennsylvania 19106

A short summary of the document to appear in the index as follows:

Mortgage dated August 6, 1982 from The New York, Susquehanna and Western Railroad Corporation, Mortgagor, One Railroad Avenue, Cooperstown, New York, 07102, to New Jersey Economic Development Authority, Capital Place One - 6N990, 200 South Warren Street, Trenton, New Jersey, 08624, covering railroad cars, locomotives and other rolling stock owned now or hereafter acquired.

Very truly yours,



WILLIAM P. QUINN

WPQ/laf
Enclosures

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JUL 13 1984 : 1 10 PM

INTERSTATE COMMERCE COMMISSION

INTER CREDITOR SUBORDINATION AGREEMENT

Agreement, dated July /2 , 1984 by and between the New Jersey Economic Development Authority (the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey, and Home & City Savings Bank, a banking corporation organized and existing under the laws of the State of New York (the "Bank").

WITNESS THAT, Bank with its principal office and place of business at 100 State Street, Albany, New York 12201, has received an application from:

Delaware Otsego Corporation

Delaware Otsego Equipment Corporation

Cooperstown & Charlotte Valley Railway Corporation

Central New York Railroad Corporation

Lackawaxen & Stourbridge Railroad Corporation

Fonda Johnstown & Gloversville Railroad Corporation

Fonfulco, Inc.

The New York, Susquehanna and Western

Railway Corporation

Susquehanna Properties, Inc.

hereinafter collectively referred to as "Borrower", to borrow the

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sum of \$5,000,000 to replenish its working capital, hereinafter referred to as "W.C. Loan"; and

WHEREAS, The New York, Susquehanna and Western Railway Corporation, hereinafter referred to as "NYS&W", is one of the said Borrowers; and

WHEREAS, NYS&W has heretofore borrowed under the terms of a Direct Loan Agreement, Promissory Note, Mortgage and other documents the sum of \$2,500,000 from the Authority on or about August 6, 1982, hereinafter referred to as the "82 Loan"; and

WHEREAS, the other entities constituting Borrower have guaranteed the repayment of the 82 Loan to Authority; and

WHEREAS, the Bank will only lend to Borrower upon the condition, among others, that no less than \$2,500,000 of the W.C. Loan is secured by a first lien on those assets of NYS&W which are currently securing the 82 Loan, plus the entire proceeds of a mortgage made January 5, 1982 by Edgewater Associates ("Edgewater Mortgage") and as assigned by Walter G. Scott, as Trustee of New York Susquehanna Railroad Company to NYS&W on August 6, 1982 and conditionally assigned on August 6, 1982 by NYS&W to the Authority and the entire proceeds from an Option Agreement dated November 18, 1980 between Hackensack Water Company and NYS&W (the "Hackensack Water Co. Option") so that Bank's W.C. Loan will be

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superior in time and right to the extent of \$2,500,000, plus interest thereon, plus the entire proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option, to the lien of the 82 Loan and superior in its right to accept and receive payments from NYS&W and from NYS&W's assets to the foregoing extent; and

WHEREAS, Section 18(c) of the Direct Loan Agreement dated August 6, 1982 between Authority and NYS&W provides that NYS&W shall not borrow any funds or grant any liens on the property receiving the Authority's loan except certain purchase money liens and "except for a first position security interest given to a financial institution acceptable to the Authority to secure a \$2,500,000 loan"; and

WHEREAS, the Authority is willing to permit NYS&W to grant Bank a first position security interest in the Edgewater Mortgage and the Hackensack Water Co. Option in addition to a first position security interest of \$2,500,000; and

WHEREAS, paragraph 11 of the Mortgage dated August 6, 1982 between Authority and NYS&W provides that the said Mortgage "may be subject and subordinate to a mortgage or mortgages to be given to secure the payment of not in excess of \$2,500,000 and interest to a government agency or financial institution as mortgagee"; and

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WHEREAS, the Authority has determined that the Bank is a financial institution acceptable to the Authority, and therefore is willing to the extent set forth above to subordinate its liens on NYS&W property to a security interest of the Bank to secure the W.C. Loan; and

WHEREAS, the Authority and Bank desire to set forth in writing certain rights and duties of each of them as a consequence of their respective security interests in property of NYS&W.

NOW THEREFORE, intending to be legally bound and in consideration of the foregoing, the parties hereto agree as follows:

1. (a) Authority agrees that, upon the occurrence of any event of default by NYS&W under the 82 Loan, any payment or distribution of any kind or character, either in cash, securities or other property, which would otherwise be received by Authority pursuant to the exercise of any legal or equitable rights or remedies available to Authority by reason of such event of default, shall be paid or delivered directly to the Bank for application on any indebtedness, due or not due, of Borrower to the Bank to the extent of \$2,500,000 plus interest thereon and in addition, the entire proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option, shall to the extent received by

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Authority be paid to Bank. Authority hereby irrevocably authorizes and empowers the Bank to demand, sue for, collect and receive every such payment or distribution to the foregoing extent and give acquittance therefor and to file claims and take such other proceedings in the Bank's own name or in the name of Authority or otherwise, as may be necessary or advisable for the enforcement of this Agreement; and, so long as the said event of default is continuing and the said indebtedness of Borrower to the Bank remains unsatisfied in whole or in part, Authority hereby agrees to execute and deliver to the Bank such powers of attorney, assignments or other instruments as may be required by the Bank in order to enable the Bank to enforce any and all claims upon or with respect to any or all indebtedness of NYS&W to Authority, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any such indebtedness of NYS&W to Authority.

(b) Should any such payment or distribution of security or proceeds thereof be received by Authority from NYS&W following an event of default by NYS&W pursuant to the 82 Loan, which is continuing, then Authority will forthwith deliver the same to the Bank in precisely the form received (except for the endorsement or assignment of Authority where necessary), for application on indebtedness, due or not due, of Borrower to the Bank up to the amount of \$2,500,000, plus interest thereon plus

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any amounts received, whether or not an Event of Default has occurred, by Authority from the Edgewater Mortgage and the Hackensack Water Co. Option and, until so delivered, the same shall be held in trust by Authority as property of the Bank. In the event of the failure of Authority to make any such endorsement or assignment, the Bank, or any of its officers or employees on behalf of the Bank, is hereby irrevocably authorized to make the same.

2. In addition to the foregoing provisions of paragraph 1 above, Authority agrees that the Bank shall be entitled to receive and apply against the W.C. Loan the entire proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option, whether or not any Event of Default has occurred under the 82 Loan and in addition to the subordination of \$2,500,000 plus interest set forth in paragraph 1.

3. (a) At such time as Bank, pursuant to the exercise of the rights granted it by Authority in paragraphs 1 and 2 hereof, or pursuant to any other rights it may exercise with respect to the collateral granted by NYS&W to Authority pursuant to the 82 Loan, reduces the indebtedness of Borrower to the Bank by an amount of \$2,500,000, plus interest thereon, then Authority's obligations pursuant to paragraphs 1 and 2 hereof shall cease, provided however, that any proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option paid to the

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Authority shall be subject to paragraphs 1 and 2 hereof. At that time, Bank agrees that, upon the occurrence of any event of default by NYS&W under the 82 Loan, any payment or any distribution of any kind or character of the collateral granted to Authority pursuant to the 82 Loan, either in cash, securities or other property, which would otherwise be received by Bank pursuant to the exercise of any legal or equitable rights or remedies available to Bank by reason of such event of default, shall be paid or delivered directly to Authority for application on any indebtedness of NYS&W to Authority until such indebtedness shall have been fully paid and satisfied. Bank hereby irrevocably authorizes and empowers Authority to demand, sue for, collect and receive every such payment or distribution and give acquittance and to file claims and take such other proceedings in Authority's own name or in the name of Bank or otherwise, as may be necessary or advisable for the enforcement of this Agreement; and, so long as the said event of default is continuing and the indebtedness of NYS&W to Authority remains unsatisfied, in whole or in part, Bank hereby agrees to execute and deliver to Authority such powers of attorney, assignments or other instruments as may be required by Authority in order to enable Authority to enforce any and all claims upon or with respect to any and all indebtedness of NYS&W to Bank, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any such indebtedness of NYS&W to Bank to the extent of the unpaid balance of the 82 Loan.

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(b) In addition to the proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option, should any such payment or distribution of security or proceeds thereof which are collateralized for the 82 Loan be received by Bank from NYS&W following an event of default by NYS&W pursuant to the 82 Loan, which is continuing, and following the reduction of Borrower's indebtedness to Bank to the extent of \$2,500,000 plus interest thereon, then Bank will forthwith deliver the same to Authority in precisely the form received (except for the endorsement or assignment of Bank where necessary), for application on indebtedness of NYS&W to Authority and, until so delivered, the same shall be held in trust by Bank as property of Authority. In the event of the failure of Bank to make any such endorsement or assignment, Authority, or any of its officers or employees on behalf of Authority, is hereby irrevocably authorized to make same.

4. (a) Authority agrees not to assign or transfer to others any claim Authority has or may have against NYS&W while any indebtedness of Borrower to the Bank remains unpaid, unless such assignment or transfer is made expressly subject to this Agreement.

(b) Authority further agrees to properly execute and deliver to Bank this Subordination Agreement, in proper form

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for recording and in sufficient numbers to allow Bank to record same in each recording office in the State of New Jersey where the Mortgage granted by NYS&W to Authority pursuant to the 82 Loan is recorded.

(c) Authority shall also execute a UCC-3 Form in form and substance satisfactory to Bank and its counsel evidencing the subordination of its right, title and interest in and to the Hackensack Water Co. Option to Bank in proper form for recording or filing in each recording or filing office in which a security agreement or financing statement has been filed.

(d) It is agreed (1) that Authority's Mortgage and assignment of the Edgewater Mortgage by NYS&W to Authority is subordinate to the Bank's mortgage, to the extent of \$2,500,000 plus interest thereon, (2) that Bank shall have priority over the Authority with respect to and the entire proceeds of the Hackensack Water Co. Option and the Edgewater Mortgage, and (3) to the extent that Bank's Mortgage is greater than \$2,500,000, plus the interest thereon, Bank's Mortgage is subordinate to the Mortgage of Authority to the extent of the unpaid balance thereof.

(f) The parties shall also execute such documents as may be required by the Uniform Commercial Code and the rules and regulations of the Interstate Commerce Commission for the

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purpose of subordinating Authority's security interest in NYS&W's personal property, equipment, furniture and fixtures, accounts receivable, contract rights, rolling stock and locomotives to Bank's security interest therein, to the extent of \$2,500,000 plus interest thereon, and subordinating Bank's security interest in all of said property, to the extent said security interest exceeds \$2,500,000 plus interest thereon, to the security interest of Authority to the extent of the unpaid balance of the 82 Loan.

(g) With respect to all of the collateral securing the 82 Loan, it is intended that Bank shall have a first lien to the extent of \$2,500,000 plus interest thereon and in addition thereto the right to receive the entire proceeds of the Edgewater Mortgage and the Hackensack Water Co. Option, Authority shall have a second lien to the extent of the unpaid balance of the 82 Loan, and Bank shall have a third lien to the extent that the W.C. Loan exceeds \$2,500,000 plus the proceeds of the Edgewater Mortgage and Hackensack Water Co. Option which have been applied in reduction of the W.C. Loan.

5. Authority agrees that the Bank, at any time and from time to time, may enter into such agreement or agreements with Borrower as the Bank may deem proper extending the time of payment or renewing or otherwise altering the terms of all or any of the obligations of Borrower to the Bank, or may release any

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balance of funds of Borrower with the Bank, without in any way impairing or affecting this agreement, provided Authority consents thereto, such consent not to be unreasonably withheld or delayed.

6. No waiver shall be deemed to be made by either party of any of its rights hereunder unless the same shall be in writing signed on behalf of said party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights or the obligations of either party in any other respect at any other time.

7. This Agreement shall be binding upon, and inure to the benefit of, Authority and the Bank and their respective successors and assigns.

8. Notice of acceptance by the Bank of this Agreement is hereby waived by Authority, and this Agreement and all of the terms and provisions hereof shall be immediately binding upon Authority from the date of execution hereof.

9. This Agreement shall be construed according to the laws of the State of New Jersey.


IN WITNESS WHEREOF, New Jersey Economic Development Authority and Home and City Savings Bank by their proper officers

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thereunto duly authorized, hereunto set their signature and
caused their corporate seal to be affixed this 12 day of
July, 1984.


[SEAL]

ATTEST:



Luke R. Caverly
Director of Finance

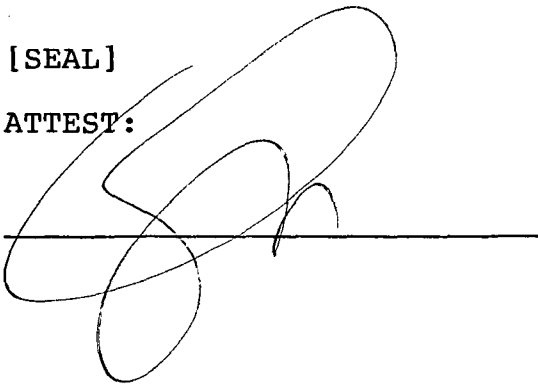
NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY

By: 

Richard L. Timmons
Assistant Deputy Director

[SEAL]

ATTEST:



HOME & CITY SAVINGS BANK

By: 

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STATE OF NEW JERSEY :
: SS.:
COUNTY OF MERCER :

BE IT REMEMBERED, that on this 9th day of July, 1984, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared RICHARD L. TIMMONS, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the ASSISTANT DEPUTY DIRECTOR of the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, the Authority named in the within Instrument; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Members of said Authority, that deponent well knows the seal of said Authority; and that the seal affixed to said Instrument is the proper seal and was thereto affixed by Luke R. Caverly, Director of Finance, and said Instrument was signed and delivered by said Assistant Deputy Director as and for the voluntary act and deed of said Authority.

Anne Monk

ANNE MONK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Feb. 23, 1987

STATE OF NEW YORK :
: SS.:
COUNTY OF *Albany* :

On this *12* day of July, 1984, before me, the subscriber, personally appeared *Donald E. Vincent*, to me known, who, being by me duly sworn, did depose and say that he resides at *Clifton Park, NY* and that he is the *Vice President* of HOME & CITY SAVINGS BANK, the corporation described in and which executed the foregoing Instrument; that he knows the seal of said corporation; that the seal affixed to said Instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and he signed his name thereto by like order.

Debra Knecht

DEBRA KNECHT
Notary Public, State of New York
Qualified in Albany County
No. 4751281
Commission Expires March 30, 1984